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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

04-344

In the Matter of

Wireless Telecommunications Bureau
Seeks Comment on MarITEL, Inc. Proposal
To Serve as Automatic Identification
System (AIS) Frequency Coordinator

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DA 03-3669

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Federal Communications Commission
Office of the Secretary

REPLY COMMENTS OF MARITEL, INC.

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SUMMARY

MariTEL, Inc. ("MariTEL") hereby submits its reply comments in response to the comments of other parties that addressed MariTEL's proposal (the "Proposal") to act as the coordinator of the use of VHF channels 87B and 88B for Automatic Identification Systems ("AIS") in a manner that resolves the controversy surrounding use of channels 87B and 88B between MariTEL and the United States Coast Guard ("USCG").

Contrary to the assertions of others, MariTEL should be permitted, as a commercial mobile radio service ("CMRS") provider, to charge for the use and coordination of its licensed frequencies. Charging for the use of spectrum is an essential element of being a CMRS provider. There is no prohibition on Federal government entities employing the services for CMRS licensees and it too can pay the proposed charges. MariTEL must coordinate the use of channels 87B and 88B so that it can take into consideration the deleterious effects of AIS operations on those channels and effectively use channels 87B and 88B and adjacent channels. Moreover, without coordination of channels 87B and 88B, MariTEL may cause interference to AIS operations. The USCG has been negligent in proceeding with the implementation of AIS carriage requirements without fully considering either the unavailability of channels 87B and 88B or the interference that AIS transmissions will cause to MariTEL (and vice versa).

The fact that MariTEL has not yet constructed its facilities, should have no impact on this proceeding. MariTEL has not been required to complete construction under the FCC's rules and cannot be punished for actions which are consistent with the FCC's rules. Moreover, MariTEL's choice not to construct has been dictated in large measure by the USCG's mis-management of AIS spectrum assets and the uncertainty caused by that mis-management.

MariTEL's proposal to coordinate the use of channels 87B and 88B is consistent with FCC precedent. The FCC often employs the services of third parties to perform functions that the FCC itself might otherwise perform. Those third parties are often the sole source of those services. Because MariTEL is the licensee of channels 87B and 88B, it is logical and efficient for MariTEL to perform this function. The coordination of AIS operations in connection with the issuance of Maritime Mobile Service Identity ("MMSI") numbers is only one means by which coordination may occur and MariTEL welcomes suggestions regarding other methods as well.

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REPLY COMMENTS OF MARITEL, INC.

MariTEL, Inc. ("MariTEL"), by its attorneys and pursuant to the invitation extended by the Federal Communications Commission ("FCC" or "Commission") in the Public Notice issued on November 19, 2003 ("Public Notice"),^{1/} hereby submits its reply comments responsive to the comments of other parties in the above referenced proceeding. The Public Notice seeks comment on MariTEL's proposal to act as the coordinator of the use of VHF channels 87B and 88B (the "Proposal") for Automatic Identification Systems ("AIS") in a manner that resolves the "controversy surrounding use of channels 87B and 88B" between MariTEL and the United States Coast Guard ("USCG").^{2/}

^{1/} *Wireless Telecommunications Bureau Seeks Comments on MariTEL, Inc. Proposal to Serve as Automatic Identification System (AIS) Frequency Coordinator*, DA 03-3669 (rel. Nov. 19, 2003) ("Public Notice").

^{2/} Public Notice at 2. The USCG desires that channels 87B and 88B be available on a nationwide basis for use in Automatic Identification Systems ("AIS"). *See Wireless Telecommunications Bureau Seeks Comments on MariTEL, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B*, DA 03-3585 ("Frequency Proceeding") (rel. November 7, 2003), referencing RM-10821, *Petition for Rulemaking by the National Telecommunications and Information Administration* at 1 (filed Oct. 24, 2003) ("NTIA Petition").

I. BACKGROUND

On December 12, 2003, MariTEL submitted comments in this proceeding in which it stated the rationale behind its Proposal. It pointed out that the Proposal is only the latest in its many attempts to assist in the resolution of the problems created by the need to employ channels licensed to MariTEL for Automatic Identification Systems ("AIS"). MariTEL invited others to approach its Proposal with these problems in mind, and to suggest alternative means by which a solution to these issues can be reached.

Unfortunately, virtually none of the commenting parties approached MariTEL's proposal in a manner that suggests that they hope to reach a responsible solution to this matter. Instead, they merely attack MariTEL's business plans and management and offer no responsible alternative solutions.^{3/} Accordingly, MariTEL is pleased to have the opportunity to submit the following Reply Comments.

II. DISCUSSION

A. MariTEL's Ability to Charge for the use of Channels 87B and 88B and Coordinate the Use of Those Channels is Consistent with its Status as a CMRS Provider

One of the fundamental misunderstandings regarding MariTEL's Proposal is the complaint that it would serve as an improper "toll" on the use of channels 87B and 88B. MariTEL finds these complaints curious. None of these commenting parties take into consideration the fact that MariTEL is a commercial mobile radio service ("CMRS") provider, authorized by the FCC to charge for the use of its frequencies. As noted in the Frequency

^{3/} As MariTEL pointed out in the Frequency Proceeding, it is neither responsible nor legally sound to simply suggest that channels 87B and 88B should be simply stripped from MariTEL, an FCC auction winner. Such an action would be contrary to law, FCC policy, and would decimate any future investment in spectrum-based services. Therefore, criticism of MariTEL's Proposal without the recommendation of a realistic alternative solution is of little value to the FCC.

Proceeding and below, the fact that these channels are unavailable for AIS operations, and remain licensed to MariTEL, is due fundamentally to the inability of the USCG to effectively manage the spectrum assets necessary for AIS operations. Therefore, channels 87B and 88B remain licensed to MariTEL and MariTEL is permitted to charge for their use.^{4/} If MariTEL cannot charge for their use, MariTEL will be the only CMRS provider singled out for this treatment, in contravention of FCC rules and policy.^{5/} Accordingly, contrary to those who assert that MariTEL is “exploiting” its position as an FCC licensee to charge for the use of channels 87B and 88B, MariTEL is simply acting consistently with the FCC’s rules in doing so.^{6/}

Similarly, Boat U.S., states that it is concerned about MariTEL’s request to “retain control of public maritime frequencies.”^{7/} Channels 87B and 88B are licensed to MariTEL, and cannot be construed as “public maritime frequencies.”^{8/} These channels are designated for the provision of commercial services (*i.e.*, service for profit) and that is precisely the service in which MariTEL desires to engage.

^{4/} The FCC’s auction of channels 87B and 88B was conducted after the international designation of those channels for AIS. MariTEL purchased rights to these channels knowing that, consistent with the USCG’s position at the time and FCC rules and decisions, alternate channels would be used for AIS in U.S. waters and that MariTEL would have a business opportunity to employ AIS technology to communicate with international vessels entering U.S. waters.

^{5/} *Melody Music v. Federal Communications Commission*, 345 F.2d 730, 732 (1965). Similarly, the FCC does not regulate the charges of other CMRS providers and it should not regulate MariTEL’s charges to use channels 87B and 88B in this case.

^{6/} See Comments of Ingram Barge Company at 4 (“Ingram Barge”) (filed Dec. 11, 2003).

^{7/} Comments of Boat Owners Association of the U.S. at 1 (“Boat U.S.”) (filed Dec. 12, 2003).

^{8/} Frequency Proceeding, Comments of MariTEL, Inc. at 2, 9 (filed December 1, 2003); Frequency Proceeding, Reply Comments of MariTEL, Inc. at 10 (filed December 11, 2003).

Other commenting parties also complain that MariTEL should not be permitted to profit from its status as the licensee of channels 87B and 88B.^{9/} They imply that MariTEL has put itself in a position to impede the implementation of AIS by becoming the licensee of channels 87B and 88B.^{10/} As the FCC is well aware, such allegations could not be further from the truth. When presented with the request to designate channels for AIS, the FCC specifically declined to do so.^{11/} MariTEL became the licensee of channels 87B and 88B with no obligation to make those, or any other 25 kHz non-offset channels, available for USCG use.^{12/} When presented with the opportunity to solidify the rights to designate channels for AIS, the USCG failed to do so.^{13/} Far from putting itself in the position of which others now complain, the FCC, and more particularly the USCG, have put MariTEL in that position.

Other commenting parties suggest that MariTEL's ability to charge for the use of channels 87B and 88B would either dissuade mariners who are not obligated to carry AIS devices from carrying them, and otherwise encourage non-compliance with mandatory carriage

^{9/} Comments of TideWater Marine, Inc. at 1 ("Tidewater") (filed Dec. 8, 2003); Comments of Furano U.S.A., Inc. at 1 ("Furano") (filed Dec. 8, 2003).

^{10/} *Id.*

^{11/} See *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket 92-257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 ¶ 48 (1998) ("Third Report and Order").

^{12/} See "FCC Announces the Conditional Grant of 26 VHF Public Coast Station Licenses," *Public Notice*, DA 99-195, 1999 FCC LEXIS 2251 (rel. May 21, 1999) (announcing that MariTEL was the winning bidder of nine VHF public coast licenses); "VHF Public Coast and Location and Monitoring Service Spectrum Auction Closes: Winning Bidders Announced," *Public Notice*, DA 01-1443 (rel. June 15, 2001) (announcing that MariTEL was the winning bidder of seven inland VPC licenses).

^{13/} The USCG has had many opportunities to secure the use of channels 87B and 88B for AIS. Even when provided with the use of channel 87, the USCG insisted upon the use of a Memorandum of Agreement ("MOA") as an instrument which permitted termination with limited notice. More importantly, the USCG chose to ignore certain important provisions of the MOA by, *inter alia*, declaring it would not switch vessels to 12.5 kHz duplex mode.

requirements.^{14/} MariTEL has no desire to impede the success of AIS. To the contrary, and as MariTEL has pointed out in the past, part of its business plan is designed to promote use of AIS capabilities.^{15/} However, MariTEL is compelled to seek compensation for the use of channels 87B and 88B because it purchased this spectrum with the justifiable expectation that it would be able to use it for profit making purposes. It is only because of the USCG's mis-management of AIS spectrum resources that these channels are, on the one hand licensed to MariTEL to use on a for-profit basis, and on the other, designated internationally for AIS operations. Accordingly, the potential that use of AIS devices will be discouraged by a charge for the use of the spectrum is the USCG's responsibility, not MariTEL's.

While obtaining compensation for the use of its spectrum is consistent with the characterization of that spectrum as CMRS, the need to coordinate its use arises for two reasons. First, for the reasons stated by MariTEL in the Frequency Proceeding, use of channels 87B and 88B for AIS systems would negatively impact MariTEL's use of not only those channels, but also of adjacent channels.^{16/} Therefore, MariTEL seeks to coordinate the use of channels 87B

^{14/} See, e.g., Comments of Furano at 2; Comments of Boat U.S. at 2; Comments of Ingram Barge at 7; Comments of the National GMDSS Task Force at 2 ("National GMDSS") (filed Dec. 10, 2003).

^{15/} See, e.g., *MariTEL, Inc. Request to Extend Construction Deadline for Certain VHF Public Coast Stations Geographic Area Licenses*, DA-03-3614, Request to Extend Construction Deadline for Certain VHF Public Coast Stations Geographic Area Licenses (filed March 27, 2003).

^{16/} Shine Micro, Inc., the only commenting party that responsibly addresses this issue, fundamentally agrees that AIS operations on channels 87B and 88B will affect other MariTEL channels, by suggesting that the FCC should recapture not only channels 87B and 88B for AIS, but also another 50 kHz of guardband spectrum. Comments of Shine Micro, Inc. at 2-3 ("Shine Micro") (filed Dec. 12, 2003). MariTEL disagrees with Shine Micro's assessment of the scope of the interference that will be caused to its operations by AIS transmissions on channels 87B and 88B. Moreover, Shine Micro's analysis is also specifically premised on MariTEL's operation of a voice communications network and does not consider interference from a marketing perspective. Comments of Shine Micro at 2. As MariTEL has notified the FCC, and as the FCC has approved, by extending MariTEL's construction deadline, MariTEL intends to

and 88B to minimize the harmful interference to its operations and minimize the impact to AIS from operations of adjacent licensed channels, providing some level of "guard band" protection where feasible.^{17/} MariTEL's coordination would permit channels 87B and 88B to be used for AIS purposes, while permitting MariTEL to continue to use its other authorized channels.^{18/} At

operate marine data communications service. As MariTEL will demonstrate by the submission of additional engineering analyses, operation of AIS systems on channels 87B and 88B will have a greater impact on adjacent and other channels when those frequencies carry data communications. Therefore, Shine Micro understates the potential damage to MariTEL's network from AIS operations.

^{17/} As MariTEL noted in the Frequency Proceeding, AIS interference take two forms. On the one hand, there will be interference from MariTEL's operations to AIS stations. This interference was demonstrated to the IALA technical and full IALA AIS committees which "recognized the interference issues of the MariTEL presentation in principle;" Shine Micro's recommendations regarding guardbands are designed to take this concern into account. Comments of Shine Micro at 3. On the other hand, there will be destructive interference from AIS operations to MariTEL's VPC station. Shine Micro's recommendations do not take this projected interference into consideration in its guardband proposal. The USCG has always acknowledged there would need to be some coordination of adjacent channel operations. The NTIA Report 00-376 "Electromagnetic Compatibility Between Marine Automatic Identification and Public Correspondence Systems in the Maritime Mobile VHF Band" to the USCG demonstrated that geographic separation or guardbands would be needed to use the narrowband offset channels near operations using the adjacent 25 kHz channels. See "Electromagnetic Compatibility Between Marine Automatic Identification and Public Correspondence Systems in the Maritime Mobile VHF Band," NTIA Report No. 00-376 (April 2000), *available at* <http://www.ntia.doc.gov/osmhome/reports/ntia00-376/ntia_rpt_00_376.pdf>. 25 kHz simplex AIS operations are no different, and in fact, require more extensive coordination. Additionally, the IMO's Guidelines for the Installation of a Shipborne Automatic Identification System (AIS) - SN/CIRC. 227 ("IMO AIS Guidelines") identifies potential AIS simplex interference to VPC channels 28, 27, and 86. See IMO Guidelines Citation: "Guidelines for the Installation of a Shipborne Automatic Identification System (AIS)," International Maritime Organization, SN/CIRC. 227 (January 6, 2003), *available at* <http://www.navcen.uscg.gov/marcomms/imo/Circulars/IMO.SN.Circ.227_AIS_Installation.pdf>. The USCG continues to ignore these earlier findings and take the unsubstantiated position that MariTEL will accommodate it by providing geographic separation in exchange for no consideration. However, MariTEL retains all rights granted by the FCC to locate transmitters at any location throughout each VPC except where constrained by VPC boundaries or incumbent coast stations.

^{18/} MariTEL's coordination will also permit it to employ channels 87B and 88B where they are not required for AIS purposes.

the same time, MariTEL would charge for the use of its licensed channels (channels 87B, 88B) like any other CMRS provider.

Second, MariTEL's coordination of channels 87B and 88B is necessary to permit the effective use of those channels (in addition to adjacent channels). If MariTEL is not permitted to coordinate the use of channels 87B and 88B, its use of those channels (as well as all of the other VPC channels for which it is licensed) will be encumbered. Neither the USCG nor other parties address this issue. Even the NTIA Petition, if granted, will require coordination to ensure that MariTEL can effectively use the VPC channels for which it is licensed. That proposal envisions the shared use of channels 87B and 88B. As MariTEL stated in the Frequency Proceeding, it is unlikely that channels 87B and 88B can be effectively shared between Federal government and non-Federal government users (except for ship station use of AIS channels) without significant coordination.^{19/} If NTIA expects any sharing of those channels to occur (or more importantly, if the FCC expects MariTEL to be able to use its other VPC channels) then coordination of AIS operations is required. The decision therefore, is not whether AIS frequency coordination is required, but whether, MariTEL, the FCC licensee of the channels will coordinate their use or whether, in an unprecedented fashion, coordination of auction spectrum will be dictated by a Federal Government entity.

The USCG's opposition to the coordinated use of channels 87B and 88B is emblematic of the fact that it continues, irresponsibly, to ignore the evidence of AIS interference (both to and from VPC station), even though it has been aware of the potential for interference for over one year.^{20/} While the USCG now says it is studying the issue,^{21/} it should have been doing so for at

^{19/} Frequency Coordination Comments of MariTEL at 17-20; Frequency Coordination Reply Comments of MariTEL at 2.

^{20/} See IMO AIS Guidelines.

least the last twelve months.^{22/} By failing to recognize this issue, and address these concerns, the USCG is misleading the FCC and maritime community regarding the impact of AIS.^{23/} The USCG continues to act irresponsibly by not having a fully defined AIS deployment plan which addresses these and other critical issues prior to requesting that the FCC reallocate channels for AIS.

Ingram Barge asserts that MariTEL's proposal is irrelevant because it is "under legal obligation as a license condition to coordinate with the Coast Guard for use of [channels 87B and 88B]."^{24/} Ingram is incorrect. MariTEL is under no obligation to make any 25 kHz non-offset channels available to the USCG (or, for that matter, any specific narrowband offset channel pairs).^{25/} The FCC's decisions and Section 80.371 of its rules make it clear that MariTEL is

^{21/} Frequency Coordination Reply Comments of the United States Coast Guard at 3 (filed Dec. 12, 2003).

^{22/} Although the USCG was aware of AIS interference to VPC channels for several years, MariTEL has continually informed the USCG of interference to AIS from adjacent channel operations. The USCG informed MariTEL on two separate occasions prior to July 2003 that it was seeking external studies to assess all the interference issues.

^{23/} MariTEL expects that the USCG continued this path because it assumed that it could bully MariTEL into allowing the USCG to operate in any manner it chose, regardless of the impact on MariTEL's operations. Moreover, MariTEL notes that the USCG's pattern of misleading the maritime industry extends to providing inaccurate information regarding MariTEL. Even if the information that the USCG was providing others was accurate (as it apparently is not), it is not the responsibility of a government entity to foment opposition to a proposal before the FCC.

^{24/} Comments of Ingram Barge at 7.

^{25/} The USCG similarly states that "[t]his licensed spectrum [presumably, channels 87B and 88B] is of course encumbered by a requirement to accommodate AIS." Comments of the USCG at 1 (filed Dec. 12, 2003). MariTEL is uncertain of the meaning of this assertion. If the USCG refers to the "requirement" that certain vessels carry AIS transmitters, then its statement is self-serving, at best. The USCG is the entity that created this requirement, which is now, in any case, subject to judicial challenge. See *MariTEL Inc. v. Admiral Thomas H. Collins and United States Coast Guard*, Civil Action No. 1:03CV02418, (U.S.D.C. filed 11/21/2003). As MariTEL pointed out in the Frequency Proceeding, there is no other requirement that channels 87B and 88B accommodate AIS. The FCC has designated no frequencies for AIS operations. On an international basis, it is clear that AIS traffic should be switched from channels 87B and 88B in

obligated to provide the USCG with up to two (2) narrowband offset channel pairs for duplex operations.^{26/} If MariTEL and the USCG are unable to agree on the narrowband offset channel pairs to be designated for USCG use, the USCG may petition the FCC to designate those channels.^{27/} No such petition has been submitted by the USCG. The petition under consideration in the Frequency Proceeding is not the petition envisioned by the FCC's rules because it does not request the use of narrowband offset channels on a duplex basis. Instead, it seeks, in contravention of the rules, two wideband (25 kHz) channels on a simplex basis. Accordingly, contrary to Ingram's assertion, MariTEL's proposal is meaningful because it makes spectrum available for AIS in a manner not otherwise contemplated by the FCC's rules.

B. MariTEL's Lack of Operational Facilities is Irrelevant

The National GMDSS Task Force ("National GMDSS") asserts that because, in its view, MariTEL has a "long record of broken promises to the maritime public and highly questionable regulatory maneuverings" its Proposal should not be adopted.^{28/} Nauticast similarly argues that MariTEL's proposal is somehow based on "avoiding the consequences of its failure to construct."^{29/} Boat U.S. also alleges that MariTEL has a "track record of not producing viable programs as promised."^{30/} These libelous allegations, in addition to being untrue, are irrelevant

the event those frequencies are unavailable for AIS. Frequency Proceeding Comments of MariTEL at 10-12; Frequency Proceeding Reply Comments of MariTEL at 5.

^{26/} 47 C.F.R. § 80.371; *Third Report and Order* ¶ 46.

^{27/} 47 C.F.R. § 80.371.

^{28/} Comments of National GMDSS at 2. National GMDSS submitted its comments in the Frequency Proceeding on December 10, 2003, and MariTEL did not have an opportunity to address those comments previously. Accordingly, and because the National GMDSS comments concern the proposal, MariTEL responds to National GMDSS in this proceeding.

^{29/} Comments of the United States Nauticast Schiffsnavigationssysteme AG at 3 ("Nauticast") (filed Dec. 11, 2003).

^{30/} Comments of Boat U.S. at 2.

to the FCC's consideration of this matter. MariTEL had no obligation to construct any facilities until May, 2004.^{31/} Therefore, it certainly cannot, under any logical assertion, be considered to have failed to meet its obligation to provide service. As Nauticast notes, MariTEL's construction deadline has been extended to May, 2006.^{32/} Therefore, MariTEL has not failed to do anything that it was required to do. In fact, of the two principal reasons behind MariTEL's request (one being the near-complete obliteration of the VHF public coast telephony market by other CMRS providers), one related directly to MariTEL's inability to proceed with construction of its facilities in light of the potential encumbrance of its licensed frequencies by AIS operations. Accordingly, it is ironic that those who would punish MariTEL for its lack of construction fail to recognize that their own desire to dedicate channels 87B and 88B for AIS has contributed heavily to that status.

C. MariTEL's Proposal is Consistent with FCC Rules and Policies

Several commenting parties contend that MariTEL would not be acting like other frequency coordinators recognized by the FCC and, therefore, MariTEL's Proposal should be rejected.^{33/} These parties are focused too narrowly on the traditional role of frequency coordination and their concerns should not be an impediment to the FCC proceeding with the type of arrangement proposed by MariTEL.

^{31/} 47 C.F.R. § 80.371.

^{32/} Comments of Nauticast at 3-4; *see also MariTEL, Inc. Request to Extend Construction Deadline for Certain VHF Public Coast Stations Geographic Area Licenses*, DA-03-3614, Order (rel. December 4, 2003) ("Construction Deadline Extension Order").

^{33/} Comments of National GMDSS at 2; Comments of Ingram Barge at 5; Comments of Shine Micro at 2-3; Comments of Fulano at 1; Comments of the USCG at 1.

As an initial matter, and as noted above, the FCC must note that MariTEL is the licensee of channels 87B and 88B.^{34/} Traditional frequency coordinators are not the licensee of any frequencies.^{35/} Therefore, and as noted above, while traditional frequency coordinators may operate on a non-profit basis, MariTEL seeks to profit from the use of channels 87B and 88B – as contemplated by the FCC’s rules and policies – and not necessarily the coordination of the channels. It offers to provide coordination services so that its channels 87B and 88B can be employed for AIS purposes concurrent with operations on MariTEL’s adjacent licensed channels.

Moreover, it is inaccurate to state that entities engaged in frequency coordination operate only on a non-profit basis as representatives of the industries they serve.^{36/} That may be true of traditional Part 90 services, but is not accurate with respect to all coordinated operations. As MariTEL pointed out, the American Society for Healthcare Engineering (“ASHE”) may be recognized as the coordinator for the Wireless Medical Telemetry Service (“WMTS”).^{37/} However, ASHE has contracted with Comsearch, Inc., a commercial engineering entity, to provide those coordination services.^{38/} Therefore, an entity that desires to use WMTS spectrum must engage Comsearch to provide frequency coordination services. In addition, frequency

^{34/} See *supra*, Section II(A)(1).

^{35/} See, e.g., 47 C.F.R. § 90.175.

^{36/} See, e.g., Comments of Ingram Barge at 3-5; Comments of National GMDSS at 2.

^{37/} See, e.g., Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order*, WT Docket No. 02-8, 17 FCC Rcd 9980 ¶ 95 (2002).

^{38/} See <<http://www.comsearch.com/interactive/wmts.jsp>>.

coordination is routinely provided in the microwave and satellite services by profit making entities that are not representative of their respective industries.^{39/}

Similarly, it is logical that MariTEL be in a sole source position to coordinate the use of channels 87B and 88B. MariTEL is the licensee of the resource being coordinated. It would make little sense for other entities to be permitted to coordinate the use of MariTEL's licensed channels. Moreover, MariTEL is far from the only instance where the FCC has recognized a sole source entity to perform a function for the FCC. The North American Numbering Plan Administrator and the Universal Service Administrative Company are designated by the FCC to administer telephone numbering resources and fee collection activities.^{40/} Their expenses are included in the fees that FCC regulatees are required to remit. The Administrative Council for Terminal Attachments is also recognized as the FCC as the entity responsible for authorizing the use of equipment under Part 68 of the FCC's rules.^{41/} Its fees also include reimbursement for its administrative expenses. MariTEL would be acting no differently. It would be performing a valuable function – assuring the maximum feasible use of VPC spectrum – and it would be permitted to recover the charges to which it is legally entitled as the licensee of the spectrum.^{42/}

^{39/} Comsearch also provides satellite and microwave coordination services. *See id.* MariTEL recognizes that coordination is not required to be performed by third parties in the satellite and microwave services. 47 C.F.R. §§ 25.203, 101.103. Nevertheless, these commercial entities provide the majority of engineering services in connection with the FCC's prior coordination requirements. MariTEL recognizes that there may be a choice of entities from whom to seek coordination. However, because MariTEL is the licensee of the resource being coordinated, it is logical that it is the sole source of coordination of channels 87B and 88B.

^{40/} *See, e.g.,* <<http://www.nanpa.com>>, <<http://www.universalservice.org>>.

^{41/} *See* <<http://www.Part68.org>>.

^{42/} Several commenters complain about MariTEL's projected level of charges. MariTEL is not wedded to its initially proposed charges and is willing to provide justification to the FCC regarding those charges to demonstrate that they are consistent with other CMRS carriers.

Several entities recommend that, instead of MariTEL providing coordination services for channels 87B and 88B, the government should do so.^{43/} This recommendation is inconsistent with MariTEL's rights as the licensee of channels 87B and 88B. Moreover, as noted above, MariTEL's purpose in coordinating the use of channels 87B and 88B is to ensure that it may employ the other VPC channels for which it is licensed. Therefore, it is appropriate for MariTEL, as the licensee of these other channels, to coordinate their use.

D. Coordination Need Not Occur in Connection with MMSI Registration

Several commenting parties complain that the FCC and the USCG have already established a scheme for the issuance of MMSI numbers, and that MariTEL need not insert itself into this process.^{44/} MariTEL's recommendation to use the MMSI assignment process as a vehicle to coordinate the use of channels 87B and 88B was intended only to permit the FCC to employ a mechanism already in place to capture the entities that employ channels 87B and 88B. It is not necessary for MariTEL to track MMSI numbers if there is an alternative mechanism that others can recommend that would identify the entities that, like cellular subscribers, would be employing MariTEL's channels. MariTEL's proposal, however, is designed to provide a benefit to the USCG by centralizing its AIS data and permitting the annual update of data related to entities that carry AIS equipment. If the USCG believes that such information is not necessary,

^{43/} See, e.g., Comments of Boat U.S. at 1; Comments of Nauticast at 4.

^{44/} See, e.g., Comments of Boat U.S. at 1; Comments of National GMDSS at 2; Comments of Ingram Barge at 5. The USCG also notes that MMSI numbers have already been issued to certain entities, and other entities which are issued MMSI numbers do not necessarily employ AIS channels. Comments of the USCG at 4. As noted herein, MariTEL need not employ the mechanism of MMSI numbers to track the entities using its frequencies. However, if it does, then it can certainly obtain from all entities that issue MMSI numbers the current MMSI holders. Moreover, any entity that receives an invoice from MariTEL can certainly indicate that they do not operate AIS equipment and be excused from paying for the use of MariTEL's channels.

then MariTEL would be pleased to collect fees for the use of its spectrum without providing any information to the USCG.

E. It is not Inappropriate to Charge Government Entities for Using Channels 87B and 88B

The USCG complains that requiring government stations – both shore and ship – to pay for their use of MariTEL’s channels would constitute an impermissible tax on government operations.^{45/} If the USCG does not wish to use channels 87B and 88B for AIS, it is welcome to identify other VHF spectrum designated for government use or alternatively, to request up to two narrowband offset duplex channels from MariTEL. If the USCG believed it critical that channels 87B and 88B be used for AIS, it should have obtained the rights to those channels more securely when it negotiated with MariTEL. Alternatively, it should have negotiated in good faith with MariTEL based on the numerous proposals MariTEL made that would have permitted complete access to channels 87B and 88B for AIS. The USCG has done neither and refused to meaningfully negotiate any agreement contemplating its needs for AIS, which are more than required by FCC rules – that may necessitate commercial terms and conditions. The fact, therefore, that MariTEL is an “unacceptable” impediment to the implementation of AIS is the result of USCG action and inaction, and the USCG cannot now complain that it will be required

^{45/} Comments of the USCG at 2. MariTEL does not suggest that the USCG would be limited in any way to the placement of AIS shore stations. MariTEL simply desires to coordinate the USCG’s use of those shore stations with its own operations, so that MariTEL does not suffer the destructive interference that will result from the USCG’s operation of channels 87B and 88B.

to pay for an asset it desires. Federal entities pay for goods and services routinely; there is no reason why it should not be required to do so in this case.^{46/}

Finally, the USCG complains that MariTEL is seeking additional benefits (*i.e.*, the ability to provide AIS data to mariners and non-federal government entities using data gathered by the USCG). MariTEL would prefer to obtain this data from the USCG and believes it an appropriate component of consideration provided in exchange for use of MariTEL spectrum.^{47/} However, MariTEL believes that AIS is available to be monitored by any entity that wishes to do so.^{48/} Therefore, the USCG's provision of that data would hardly create a government created monopoly. If the USCG believes it inadvisable to provide MariTEL with AIS data, MariTEL will simply gather publicly available AIS data and provide that information for a fee.

^{46/} MariTEL recognizes that there may be Federal contracting and procurement regulations applicable to the USCG's use of MariTEL's channels 87B and 88B. MariTEL is certainly willing to work with the USCG to ensure that those regulations are rigorously observed.

^{47/} MariTEL welcomes suggestions from the USCG in identifying alternate arrangements to replace the value from this aspect of the MariTEL Proposal.

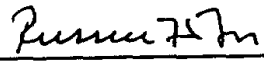
^{48/} See <<http://www.pintek.net/>>.

III. CONCLUSION

MariTEL, Inc. hereby submits the foregoing Reply Comments and asks that the FCC grant the MariTEL Proposal and take other actions consistent with the views expressed herein.

Respectfully submitted,

MariTEL, Inc.

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December 22, 2003

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I, Susan F. Duarte, do hereby certify that on this 22nd day of December, 2003, the foregoing Reply Comments were served on the following persons by the method indicated:

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